

V.I.L.
501.06-01

**INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR**

DEPARTMENT OF THE TREASURY

Date: June 6, 1997

In Reply Refer to:

Form Number:
990

Tax Period(s) Ended:

Person to Contact:

EIN

Telephone Number:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Sir or Madam:

We have enclosed a copy of our examination report explaining why we believe an adjustment to your organization's exempt status is necessary.

If you do not accept our findings, you may appeal the proposed adverse determination through our office to the Office of Regional Director of Appeals. To request Appeals consideration, you should follow the instructions in the enclosed Publication 892. We will then forward your request to the Office of Regional Director of Appeals. If a hearing is requested, you will be contacted to arrange a mutually convenient time and place. When you write, please provide your daytime telephone number and the most convenient time for us to call in case we need to contact you. An addressed envelope is enclosed for your convenience.

If you request Appeals consideration, it will be necessary for you to extend the limitation period proscribed by law for assessing additional tax. This is necessary because the Appeals Office cannot accept a case for consideration unless there are at least nine (9) months left on the period for assessing additional tax when the request is received by the Appeals Office. In order to extend the limitation period for assessing tax, both copies of the enclosed Forms 872 must be signed by an individual having legal authority to bind the Corporation. The signed Forms 872 should be submitted to us.

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on or before the date your request for appeals consideration is received.

You may also request that we refer this matter to the National Office for technical advice, as explained in Publication 892. If a determination letter is issued to you based on technical advice from the National Office, no further administrative appeal is available to you within the Service on the issue that was the subject of the technical advice..

If you accept our findings, you do not need to take further action. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the examination report and this letter will become final. In that event, you will be required to file Federal income tax returns on Form 1120, U.S. Corporation Income Tax Return, and for the tax period shown above. File these returns with your key District Director for exempt organization matters within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,



Paul M. Harrington
District Director

cc:

Enclosures:

Examination Report
Agreement Form 6018
Publication 892
Consent Form 872
Publication 1035
Envelope

EXPLANATION OF ITEMS

Schedule No. or
Exhibit A

Name of Taxpayer

Year/Period
Ended

ISSUE: Revocation of Tax Exemption Status As A Business League Under Internal Revenue Code Section 501(c)(6).

ISSUE: If revocation is upheld, the effective date of revocation should be

ISSUE: If revocation is upheld, should relief under IRC 7805(b) be recommended in determining the date of revocation.

FACTS & BACKGROUND:

") doing business as a registered fictitious name, is a nonprofit corporation, organized under the laws of the State of and incorporated or It was denied tax exemption at the time of application. The taxpayer appealed the adverse decision and was granted exempt status as a Business League organization under the Internal Revenue Code ("IRC" or "Code") section 501(c)(6) by the Internal Revenue Service

The purpose of the organization as stated in Article II of the Articles of Incorporation, is as follows:

(a) To promote the general welfare of all the business firms resident in the area known as located in to provide a means whereby the business organizations resident in an collectively deal with and control areas of mutual concern, including, but not limited to, maintenance and beautification of the park area, air and water pollution, ingress to and egress from the park, park security, employee medical problems and generally deal with and promulgate areas of common concern and need of those persons. firms and corporations resident in

The area consists of acres of buildable land located in unincorporated . At the present time there is less than 10 acres of vacant land. The types of business in the park have changed through the years. Today its stands about wholesale and services and retail. There is no concentration of any specific industry. Since the majority of the association members are engaged in i.e., import, export, sometime in , it was decided to replace the word with when referring to the name of the park.

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The park is surrounded by county roads. It's main entrance is on _____ which is open to the public/traffic at all times. The other roadways adjacent to the park are gated and closed daily between 8:00PM to 6:00AM and on weekends. There are no common areas in the park.

The organization was established by the Developers, _____ who are also permanent directors of the Board. It's primary activities has been to enhance and supplement law-enforcement security services, public safety, park beautification, and act as a liaison with county government. Membership in the association is voluntarily but limited only to parcel owners and renters in this particular complex. Not all of the business in the park are members. The Board has the power to assess for betterments but cannot force collection.

The revenues are derived from dues, assessments and interest from savings. There is a charge of \$100 per building, \$50 if a tenant. The assessment computation is based upon acreage of land and building. The total income for calendar year _____ was \$ _____. The total expenditures for the same period were \$ _____. The organization paid for security services (_____) of all expenditures. The remaining expenses \$ _____ were for park manager's salary, repairs and maintenance and other administrative cost.

The individual members of the organization have no common business interest other than occupy a common geographical area and the desire to receive the benefits offered by the association. These members own and conduct different types of businesses. The association does not work to improve business conditions within a broad community. Its main operational activity consist of coordinating tenant matters of security and surveillance services performed by a local security firm within its industrial park.

LAW AND GOVERNMENT'S POSITION:

Section 501(c) of the Internal Revenue Code describes certain organizations exempt under section 501(a) and reads, in part, as follows:

"(6) Business leagues, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of the Income Tax Regulations provides, in part, as follows:

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"A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons."

Revenue Ruling 73-411, 1978-2 C.B. 180, applies a well-known and generally accepted definition of a trade association as determined by the Department of Commerce:

"A nonprofit, cooperative, voluntarily-joined organization of business competitors designed to assist its members and its industry in dealing with mutual business problems in several of the following areas: accounting practices, business ethics, commercial and industrial research, standardization, statistics, trade promotion, and relations with government, employees and the general public."

In this ruling, a shopping center merchants association whose membership was restricted to and required of the tenants of a one-owner shopping center and their common lessor, and whose activities were directed to promoting the general business interests of its members, did not qualify as a business league or chamber of commerce under section 501(c)(6) of the Code. The community represented by the membership of the organization was a closed, non-public aggregation of commercial enterprises having none of the common characteristics of a community in the usual geographical or political sense. The activities served instead the individual business interests of the owners of the industrial park units and, therefore, fall outside the scope of the exemption accorded by section 501(c)(6) of the Code.

Rev. Rul. 66-338, 1966-2 C.B. 226, cited an organization that was denied exemption under section 501(c)(6) because it provides particular services for members; this organization provided consultant services and cooperative purchasing services.

Rev. Rul. 59-391, 1959-2 C.B. 151, cited that an organization was denied tax exemption under section 501(c)(6) for two reasons: (1) there was a lack of common business interest: membership was so restricted that each member represents a different trade, business, occupation, or profession,

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thus their only common business interest was a desire to increase their individual sales and (2) they provided various services for members. In addition, this ruling differentiated this type of organization from a chamber of commerce in that this type of organization limited its membership where a chamber of commerce does not. (Similarly, your organization limits its members to those parcel owners and business operating in t

In Produce Exchange Clearing Association, Inc. V. Helvering, 71 F.2d 142 2d Cir. (1934), the courts held that activities which constitute the performance of particular services for individual persons may preclude exemption from Federal income tax under section 501(c)(6) of the Code. An activity that serves as a convenience or economy to members in the operation of their business is a particular service of the type proscribed.

And lastly, in National Muffler Dealers Association, Inc. V. United States of America, 77-2 USTC 9756, the courts pointed to Regs. 1.501(c)(6)-1, which provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons or in this case of the general. The manifest intention of Congress and the common characteristics of organizations enumerated in Internal Revenue Code 501(c)(6) are that they foster well-being within a broadly defined segment of the commercial sector and promote some aspect of general economic welfare rather than supporting particular private interests.

The Court held that the association in this case was not a tax exempt business league within the meaning of IRC 501(c)(6) because the associations services were limited to

rather than being directed to the improvement of business conditions within the muffler repair industry generally.

IRC 7508(b) states "Retroactivity of Regulations or Rulings.- The Secretary may prescribe the extent, if any, to which any rulings or regulations, relating to the internal revenue laws, shall be applied without retroactive effect.

CONCLUSION:

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After reviewing the facts and circumstances of this case, the applicability of Code section 501(c)(6), and Regs. 1.501(c)(6)-1, it has been determined that the Sunshine State Industrial Park Association, Inc. is not an association of individual persons with common business interests. Its main operational activity is providing and managing the performance of security services for the tenants, who would normally would have to provide their own security at a higher cost. The security and surveillance costs accounted for of the annual membership dues an of its total expenditures. These services are provided solely for the individual members of the park.

In Produce Exchange Clearing Association, Inc. V. Helvering, an association performed an activity that served as a convenience or economy to members in the operation of their business. It was held that the performance of particular services precluded their exemption under section 501(c)(6) of the code. The security services provided for the independent tenants or owners located in the are similar activities in that they serve a convenience to the members in the operation of their businesses.

The restriction of membership in the association to tenants and parcel owners of the industrial park and operational activities which directly relate to the handling of tenant security matters is most similar to Revenue Ruling 73-411, which ruled that it precluded the organization from having the basic characteristics required to qualify for exemption under Code section 501(c)(6).

Rev. Rul. 78-255, 1978-2 C.B. 160, stated an organization which had a voluntary membership open to all business in a neighborhood community and was not concerned with tenant matters was entitled to exempt status. The organization was operated to improve, within the meaning of section 1.501(c)(6)-1 of the regulations, the business conditions of a community. The is open to all businesses located in a neighborhood community and its primary concern is with tenant matters.

The revenue rulings and court cases cited above show the differences between and those organizations which have been granted exemption under IRC 501(c)(6). The maintains a closed membership, deals only in tenant matters, they perform or manage particular services for the benefit of their members. Therefore, it is necessary to conclude that the organization fails to have the basic characteristics required to qualify as an organization described in section 501(c)(6) of the Internal Revenue Code of 1954 and revocation of its tax exempt status is hereby proposed.

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It is the Government's position based on the documents reviewed, that the organization's did not alter its operations and did not meet the requirements of IRC 501(c)(6) at the time it filed for exemption. Although recognition of exemption was erroneous because of a misinterpretation of the applicable law by the Service, relief under IRC 7805(b) is not recommended and should not be used for determining the date of revocation.

Retroactive revocation of its tax exempt status will not be detrimental to the taxpayer and/or its members. The members will not be affected by the proposed revocation. They will still be entitled to a tax deduction for the fees paid as ordinary and necessary businesses expense under section 162 of the IRC. The organization will not be liable for any past tax liability since the years _____ and prior are closed by statute. In the future, the reported _____ tax loss of _____ will be carry-forward and used to offset the organization's _____ (\$ 7,100) and _____ (\$ 5,5662) taxable income.

TAXPAYER'S POSITION:

The organization's position is the government raised this issue at the time of filing for tax exempt status, and ruled in their favor. Form 6018 was faxed to the taxpayer through it's representative.